

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Managed Health Care**

**Regulatory Action:**

**Title 28, California Code of Regulations**

**Adopt sections: 1300.67.02**

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2021-0112-01**

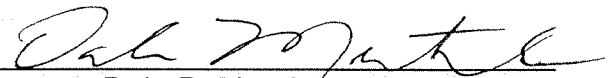
**OAL Matter Type: Emergency (E)**

This emergency rulemaking action adopts a regulation allowing for the expeditious transfer of patients (pursuant to state public health orders that direct or allow hospitals to transfer patients to other health care facilities) from the most highly impacted hospitals to hospitals with more available capacity and preventing health plan prior authorization requirements for the transfer of enrollees between hospitals from causing unnecessary delays. The regulation requires reimbursement by patients' health plans for transfer costs and reimbursement for receiving hospitals' health care services, as specified, including receiving hospitals that do not have contracts with patients' health plans.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/15/2021 and, pursuant to Executive Orders N-40-20 and N-71-20, will expire on 11/13/2021. The Certificate of Compliance for this action is due no later than 11/12/2021.

**Date: January 15, 2021**

  
Dale P. Mentink  
Senior Attorney

**For: Kenneth J. Pogue  
Director**

**Original: Shelley Rouillard, Director  
Copy: Jennifer Willis**

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

**EMERGENCY**

For use by Secretary of State only

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2021-0112-01E

For use by Office of Administrative Law (OAL) only

2021 JAN 12 A 9:33

OFFICE OF  
ADMINISTRATIVE LAW**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of CaliforniaJAN 15 2021  
1:23pm

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Department of Managed Health Care

AGENCY FILE NUMBER (If any)  
Control No. 2021-TRFR**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)		FIRST SECTION AFFECTED		2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER		FAX NUMBER (Optional)	
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Transfer of Patients		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
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**2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)**

<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	Section 1300.67.02
	AMEND	
	REPEAL	
TITLE(S) 28		

**3. TYPE OF FILING**

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify)	

**4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)**

<b>5. EFFECTIVE DATE OF CHANGES</b> (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

<b>6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY</b>			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

<b>7. CONTACT PERSON</b> Jennifer Willis		TELEPHONE NUMBER 916-324-9014	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Jennifer.Willis@dmhc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Mary Watanabe

Digitally signed by Mary Watanabe  
Date: 2021.01.11 15:59:43 -0800

DATE

1/11/2021

TYPED NAME AND TITLE OF SIGNATORY

Mary Watanabe, Director

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

JAN 15 2021

Office of Administrative Law

### **§ 1300.67.02 Transfer of Enrollees Pursuant to a Public Health Order**

- (a) Applicability. This section applies to a health plan offering group or individual health care coverage that includes hospital, medical, or surgical benefits, including a grandfathered health plan as defined in section 1251(e) of the Patient Protection and Affordable Care Act. This section does not apply to Medi-Cal managed care health plans with a contract entered into pursuant to Chapter 7 (commencing with section 14000), Chapter 8 (commencing with section 14200), or Chapter 8.75 (commencing with section 14591) of Part 3 of Division 9 of the Welfare and Institutions Code.
- (b) Definitions. The following definitions apply for the purposes of this section:
- (1) Covered public health order—Means an order issued by the State Public Health Officer pursuant to Division 112 (commencing with section 131000) of the Health and Safety Code, or during a local health emergency as defined in section 101080 of the Health and Safety Code or a state of emergency or local emergency as defined in section 8558 of the Government Code, that directs or allows hospitals or other health care facilities to transfer patients to other health care facilities in response to, or otherwise as a result of, the COVID-19 pandemic. This specifically includes an order issued to allocate or preserve health care resources in the face of increased demand for health care resources related to COVID-19 during a California state of emergency.
  - (2) Transferring facility—Means the health care facility from which an enrollee is transferred as directed or allowed by a covered public health order.
  - (3) Receiving facility—Means the health care facility that receives an enrollee transferred from a transferring facility as directed or allowed by a covered public health order.
- (c) When a health care facility transfers an enrollee pursuant to a covered public health order, the following applies:
- (1) The enrollee's health plan shall not require prior authorization or prior notice, or impose any other requirements that delay or prevent the transfer of the enrollee.
  - (2) The health plan shall cover the medically necessary costs of moving the enrollee between the transferring facility and the receiving facility.
  - (3) The health plan shall reimburse the receiving facility for all medically necessary services provided to the enrollee during the first 72 hours the enrollee is treated at the receiving facility, regardless of whether the receiving facility has a contract with the health plan.
  - (4) After the first 72 hours, the health plan shall continue to reimburse the receiving facility for all medically necessary services provided to the enrollee at the receiving facility if:
    - (A) within 72 hours of receiving the enrollee, the receiving facility notified the health plan that the facility is treating the enrollee; and
    - (B) the health plan does not disapprove the facility's request to continue

providing medically necessary care to the enrollee. If the health plan disapproves the receiving facility's request to continue providing medically necessary care to the enrollee, the health plan shall reimburse the receiving facility for medically necessary services the receiving facility provides the enrollee up to the time the health plan effectuates the enrollee's transfer or the enrollee is discharged from the receiving facility.

(5) If the health plan has a contract with the receiving facility, the health plan shall reimburse the receiving facility per the terms of that contract.

(6) If the health plan does not have a contract with the receiving facility, the health plan shall reimburse the receiving facility for the reasonable and customary value of the services the enrollee receives at the receiving facility.

(7) "Reasonable and customary value" has the same meaning as defined in section 1300.71(a)(3)(B) of this title.

(d) An enrollee transferred pursuant to a covered public health order shall be liable for no more than the cost the enrollee would have incurred if the enrollee had remained in a contracting health facility. For the purpose of this section, contracting health facility has the meaning in subdivision (f)(1) section 1371.9.

NOTE: Authority cited: Section 1343 and 1344, Health and Safety Code. Reference: Sections 1367, 1367.01, and 1367.03.